**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MRS. JUSTICE K.HEMA**

**TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929**

**CRL.A.No. 1272 of 2004(B)**
**----------**
**SC.412/2001 of ADDL.SESSIONS COURT, THODUPUZHA**
**CP.60/2000 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU**
**.....**

**APPELLANT: ACCUSED 1 AND 2.**
**----------**

**1. SIBI, S/O.JOHN, PARUVANANICKAL,**
**VEETTILM, BARIKANNI BHAGOM,**
**KARUMTHENARUVI, UPPUTHARA, IDUKKI.**

**2. AULDAS, S/O.ABRAHAM, PAZHAYA PAMBANAR**
**ESTATE, LAYATHIL THAMASOM, PAMBANAR KARA,**
**PEERMADE.**

**BY ADV. SRI.V.G.ARUN**

**RESPONDENTS: COMPLAINANT.**
**----------**

**STATE OF KERALA, REP. BY THE**
**PUBLIC PROSECUTOR, HIGH COURT OF KERALA,**
**ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B.KOSHY & K.HEMA, JJ.**

**----------**

**CRL.A.NO.1272 OF 2004 ()**

**----------**

**Dated this the 20th day of November, 2007**

**J U D G M E N T**

**KOSHY,J.**

Three accused faced trial for offences punishable under Sections 302, 397, 324 and 201 read with Section 34 of the Indian Penal Code. A3 was found not guilty and he was acquitted. A1 and A2 were convicted for the offences punishable under Sections 302, 397 and 201 of IPC. A1 and A2 jointly filed this appeal.

2. The allegation of the prosecution was that in order to commit robbery of jeep bearing Registration No.KL 7S/5180 after committing the murder of the driver of the said jeep by name Sojan, A1 hired the jeep at Kuttikkanam Junction on 8.12.1997 at 10.30 p.m. He got A2 and A3 boarded in the said jeep at Memala bhagam. They travelled along the Upputhara – Elappara estate road. When they reached the road which is leading to Cheenthalar 3rd division at 12 p.m, A2 put a noose around the neck using a plastic rope and pulled and made

suffocation to him. A3 pulled the said Sojan by his legs and beaten him on both sides of his abdomen with a blunt edge of a chopper causing injuries. A2 had changed the jeep number as KL 7S 5387. A1 had driven away the jeep and they dumped the dead body in the safety tank of latrine of Payward layem of Launtry estate after removing the clothes. They had taken the jeep to the place Thanchavoor of Tamil Nadu and pledged the same with PW7. They had thrown away the removed clothes of Sojan to river. Thus they murdered Sojan and caused disappearance of evidence. They committed the said overt acts in furtherance of their common intention.

3. PW1 gave F.I.Statement. He is the paternal uncle of the deceased Sojan. According to him, he was in possession of the jeep on the basis of Ext.P1, an agreement of sale. The chasis number of the jeep is DV 215486 and registration number is KL 7S/5180. The above jeep and driver were missing from 8.12.1997. Several enquiries were made by him. Finally he gave Ext.P2 F.I.Statement. PW2 is another witness who stated that he is residing in a Village called Kakkil Chakkelpetty of Uthamapalayam Taluk of Teni District, Tamil Nadu. He also

stated that A1 stayed in the house of his father for two months and thus he has acquaintance with A1. On 9.12.1997, A1 along with other accused arrived in a jeep there and they enquired him about one Ravi, PW3. He had seen all the accused in the jeep and he had taken them to PW3. PW3 deposed that PW2 is residing near his house and on 9.12.1997 PW2 reached the house knocked the door in the early hours and when he opened he could see A1 with PW2 and then PW3 boarded the jeep which was parked on the road. A1 was driving the jeep. A2 and A3 were in the jeep. PW3 accompanied the accused till the place called Kusalampetty. That place is about 40 kms away from the house of PW3. He knew A1 earlier and since he travelled in the jeep about 40 kms, he stated that he can clearly identify A2 and A3 also. PW4 deposed that accused approached him along CW4 and asked some money for the purpose of filling fuel in the jeep. But he did not give money. PW6 is the mahazar witness for seizure of the R.C.book of the concerned jeep from its registered owner Rameshan. PW7 stated that he is residing in house No.13 A near Thanchavoor, Tamil Nadu. House of the wife of PW7 is at Kambam. Accused approached him about seven years ago. Accused

approached him stating that they are returning after pilgrimage to Velamkanni. They have no sufficient money to fill fuel. They informed that they lost the R.C.book and they requested Rs.5,000/- for the purpose of filling fuel in the jeep. He gave Rs.2,000/- to them. Witnesses stated that they went away promising to come back with the R.C.book. Police has seized the above jeep from the possession of PW7 subsequently. Ext.P4 is the recovery mahazar of the R.C.book seized from the registered owner of the jeep and chasis number tallies with the numbers in the R.C.book while the jeep seized from the compound of PW7. PW8 is the paternal uncle of deceased Sojan. He identified the dead body. According to him, the body was recovered from the safety tank of the latrine. But when water was poured, the identity was lost. PW9 who was also present at the time of inquest and who knew the deceased earlier, identified the dead body. PW10 who is also a witness to the inquest report stated that body of Sojan was recovered from the safety tank of the latrine and in the presence of A1 and A2 he also identified the dead body. PW10 who was present when body was recovered, also identified the dead body. He also deposed that he saw A1 and A2 with Sojan near

Wood lands estate on the crucial date of missing. He identified them. PW11 is a witness to the scene mahazar which is marked as Ext.P6. PW12 is a witness to the inquest report. The plastic rope on the hands of the dead body was marked as MO1. PW13 has affixed his signature in the mahazar prepared for the seizure of the jeep from the residential compound of PW7. PW15 is a retired Joint Director of Forensic Laboratory, Thiruvananthapuram. He has superimposed the skull by using the method of video superimposition and marked as MO3. All the 8 parametres were satisfied for identification of dead body with the life size photograph of deceased Sojan.

4. PW17, C.I. of Police, main investigating officer was examined to prove that on the basis of the information made by A1, the body was recovered from the latrine of 'payward layem' of laundry estate. He also deposed regarding the confession of A1. PW17 made the inquest report. The post mortem certificate Ext.P16 marked through PW18 only shows that at the time of post mortem it was fully decomposed body. Only partly skeletonised body and hyoid bone and superficial injuries were not available because of the decomposition.

From the confession of A1 missing jeep was recovered from the premises of PW7 and PW7 identified the accused. Evidence of Pws.2, 3 and 4 shows that the accused were seen together and they came to Tamil Nadu with the missing jeep. Accused had no explanation how they possessed the jeep. In 313 statement accused completely denied their involvement in the crime. When the missing jeep was found with the accused on the next day of missing, it is for them to explain what happened to the driver. Only because of confession by A1 the dead body was found out. It is true that A3 was given the benefit of doubt regarding identification. The State did not file any appeal. Here in this case, offences against appellants were proved by clear circumstantial evidence. It is very clear that the missing jeep came into the possession of A1 along with his friends A2 and A3 and A1 along with these persons went to Tamil Nadu and pledged the jeep and got Rs.2,000/- from PW7. They promised PW7 to bring the R.C.book and necessary documents. Accused have no explanation regarding what happened to the driver of the vehicle. The deceased was identified as the person who died on the basis of video superimposition. The identification of dead body and recovery of the same from the

safety tank of payward layem of laundry estate are proved by the evidence of PW8, PW9, PW10, PW12 and PW13. Evidence of PW1 shows that deceased was entrusted with the jeep and he was missing from 8.12.1997 onwards. All these connects the link of circumstances to come to the conclusion that only hypothesis possible from the evidence is that the appellants are guilty and we see no ground to differ from the findings of the trial judge with regard to the conviction of the appellants. They together have murdered deceased Sojan with the intention to commit robbery of the vehicle and they also caused destruction of evidence by putting the dead body in the safety tank of the latrine in furtherance of their common intention. Hence conviction of the appellants under Sections 302, 397 and 201 of IPC are fully justifiable and the sentence imposed is proportionate to the evidence proved. We see no ground to interfere in the conviction and sentence passed and hence this appeal is dismissed.

**J.B.KOSHY, JUDGE**

**K.HEMA, JUDGE**

prp

**J.B.KOSHY & K.HEMA, JJ.**

---

**CRL.A.NO.1272 OF 2004 ()**

---

**J U D G M E N T**

---

**20th November, 2007**